

## **CONFIDENTIAL RELEASE AND SETTLEMENT**

This Settlement Agreement and General Release of All Claims ("Agreement") is made by and between Kimberly Embry, solely in her individual capacity (hereinafter, "PLAINTIFF") on the one hand; and Lambro Industries of California, Inc., Lambro Industries, Inc., Lambro-West, Inc., True Value Company, and all past, present and future customers and vendors of DEFENDANTS, and each of its or their respective agents, officers, directors, insurers, shareholders, members, owners, attorneys, servants, representatives, employees, subsidiaries, partners, sister companies, affiliates, predecessors, successors in interest, assignees, firms, or corporations on the other hand (collectively, "DEFENDANTS"). This Agreement is made to resolve and satisfy, in full, those claims referenced in PLAINTIFF'S Proposition 65 Notice of Violation dated February 13, 2017 ("Prop 65 Claims").

PLAINTIFF and DEFENDANTS are collectively referred to as the "PARTIES."

### **1. INTRODUCTION**

The PARTIES desire to enter into this Agreement in order to provide for payment in full settlement and satisfaction of all known and unknown CLAIMS and DAMAGES of PLAINTIFF.

To the extent any such CLAIMS are or have been filed with any authority, they are hereby withdrawn and dismissed with prejudice, and PLAINTIFF shall take all reasonable steps to ensure such withdrawal and dismissal promptly.

### **2. CONSIDERATION BETWEEN PARTIES**

2.1 DEFENDANTS will pay to PLAINTIFF the sum of \$15,000.00 within five (5) days of the date all Parties sign and receive this Agreement ("Effective Date"), which shall be allocated as \$15,000.00 to the attorneys for PLAINTIFF.

2.2 The PARTIES will each bear their own attorneys' fees and costs other than the payment above.



### **3. PLAINTIFF'S RELEASE**

3.1 The word "CLAIMS," including as quoted from California Civil Code Section 1542 in section 4 below, refers to all legal and/or equitable rights or demands PLAINTIFF has, may have and/or could have arising from, or out of, or in any way related to or connected with the events, transactions, and/or circumstances which are the subject of or related to PLAINTIFF'S Prop 65 Claims, as well as any other claim arising in law or equity of any kind whatsoever.

3.2 The word "DAMAGES" shall hereinafter refer to all recoverable damages, past, present or future, of any type or description, expressly including, but not limited to, attorneys' fees, and costs of suit, without any limitation whatsoever, which PLAINTIFF has, may have and/or could have recovered as a result of or in any way related to or connected with the events, transactions, and/or circumstances, which are the subject of or related to PLAINTIFF'S Prop 65 Claims.

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3.3. In consideration of the payment referred to above, PLAINTIFF hereby fully and forever completely releases, acquits, and discharges DEFENDANTS from any and all CLAIMS and DAMAGES.

3.4 PLAINTIFF expressly directs that payment of the settlement proceeds to be paid as follows:

One check, in the amount of \$15,000.00, payable to the "Trust Account of Nicholas & Tomasevic, LLP"

#### 4. WAIVER OF SECTION 1542

4.1 There is a risk that other claims not now known to the Parties arising out of PLAINTIFF'S Prop 65 Claims before the Effective Date will develop or be discovered. PLAINTIFF shall, and hereby does, assume this risk.

4.2 PLAINTIFF, by her signature upon this Agreement, specifically represents and authorizes DEFENDANTS to expressly rely upon that representation, that they understand that their release is expressly intended to cover and include all PLAINTIFF'S known and unknown CLAIMS and all DAMAGES.

4.3 PLAINTIFF, by her signature upon this Agreement, further specifically represents and authorizes DEFENDANTS to expressly rely upon that representation, that she is aware of, and has been so advised by her attorneys, of the provisions of California Civil Code section 1542, which in relevant part provides that:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

PLAINTIFF hereby expressly waives the provisions of said Section 1542 as to all CLAIMS for any DAMAGES that PLAINTIFF may have against DEFENDANTS as of the date of the signing of this agreement. Should any CLAIM be commenced, PLAINTIFF shall not participate in or benefit from such CLAIM or similar CLAIM, and shall seek immediate dismissal of such CLAIM with prejudice.

#### 5. NO PRIOR ASSIGNMENT OR TRANSFER

5.1 PLAINTIFF, by his signature on this Agreement, specifically represents, and authorizes DEFENDANTS to expressly rely upon that representation, that she and only she owns his claims, has the authority to enter into this Agreement, and that there has been no assignment or other transfer of any CLAIMS or DAMAGES.



## 6. NO ADMISSION OF LIABILITY

6.1 It is expressly understood, acknowledged and agreed to by the PARTIES that by entering into this Agreement, DEFENDANTS do not admit, expressly or impliedly, and expressly and without reservation deny any fact or liability for CLAIMS or DAMAGES. Rather, this Agreement is entered into solely by way of compromise and settlement of disputed claims.

## 7. NON-DISPARAGEMENT OF PARTIES

7.1 The PARTIES agree not to make any statements, written or verbal, or cause or encourage others to make any statements, written or verbal, that defame, disparage or in any way criticize the personal or business reputation, practices, or conduct of the PARTIES, or their agents. The PARTIES acknowledge and agree that this prohibition extends to statements, written or verbal, made to anyone, including but not limited to, the news media, investors, potential investors, any board of directors or advisory board or directors, industry analysts, competitors, strategic partners, vendors, employees (past and present), administrative bodies, websites, review platforms, and clients. The PARTIES further agree that if, prior to the date of signing this Agreement, they have circulated, written, or published any disparaging or negative statements in writing, such as negative reviews, that they shall immediately take all steps reasonably necessary to delete or retract those disparaging or negative statements. The PARTIES understand and agree that this Paragraph is a material provision of this Agreement and that any breach of this Paragraph shall be a material breach of this Agreement, and that the PARTIES would be irreparably harmed by violation of this provision.

## 8. FUTURE STEPS TO COMPLY WITH PROPOSITION 65

8.1 Effective upon execution of this Agreement, DEFENDANTS shall not ship or deliver for sale or distribution in California any products that contain Di(2-ethylhexyl)phthalate ("DEHP"), Diisodecyl phthalate ("DIDP"), and Diisononyl phthalate ("DINP") in levels that exceed the safe harbor levels for these chemicals, unless such products are shipped or delivered with a clear and reasonable warning. DEFENDANTS shall further take all reasonable steps to affix a clear and reasonable warning on all units currently on shelves for sale in California.

8.2 To the extent practicable, DEFENDANTS shall take reasonable steps to ensure that each warning required shall be prominently affixed to or printed upon the label or packaging of the product so as to be clearly conspicuous, as compared with other statements or designs on the label or packaging as to render it likely to be read and understood by an ordinary purchaser of the product. If the warning is displayed on the product's label, it shall be at least the same size as the largest of any other health or safety warnings on the product and the word "WARNING" shall be in all capital letters and in bold print. For any products sold via a website by DEFENDANTS, the warning shall appear either (a) on the checkout page on the website for California customers relating to any of the product being sold, or (b) on the product information page related to a product on that website.

8.3 For those products that are subject to the warning requirements, the following language, or something in substantially similar form, shall be applied to each unit:

"WARNING. This product contains a chemical known to the State of California to cause cancer, birth defects or other reproductive harm."

Handwritten signature and initials in blue ink, located in the bottom right corner of the page.

## 9. MISCELLANEOUS PROVISIONS

9.1 Entire Agreement: This Agreement, as fully executed, constitutes the full and entire Agreement. PLAINTIFF expressly represents, and authorizes DEFENDANTS to rely upon said representation, that there is no other Agreement, oral and/or written, between the PARTIES.

9.2 Final Agreement: PLAINTIFF, by his signature upon this Agreement, specifically represents, and authorizes DEFENDANTS to rely upon said representation, that (1) this Agreement and its reduction to final form is the result of extensive good faith negotiations between the PARTIES; (2) counsel for PLAINTIFF has carefully reviewed and examined this Agreement for execution by PLAINTIFF; and (3) any statute or rule of construction that ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement.

9.3 Binding Agreement: This Agreement is, and shall be, binding upon the PARTIES.

9.4 Interpretative Law: This Agreement is made and entered into the State of California and shall, in all respects, be interpreted, enforced and governed by and under the laws of the State of California.

9.5 Modifications: This Agreement may be amended or modified only by a writing signed by PLAINTIFF and DEFENDANTS.

9.6 Paragraph Headings: Paragraph headings are for reference only and shall not affect the interpretation of any paragraph hereto.

9.7 No Inducement: PLAINTIFF specifically represents, and authorizes DEFENDANTS to rely upon said representation, that no promise or inducement has been made or offered by DEFENDANTS except as set forth in this Agreement, and that this Agreement is not being executed by PLAINTIFF in reliance upon any statement or representation of DEFENDANTS concerning the nature and extent of PLAINTIFF'S CLAIMS or DAMAGES.

9.8 Attorneys' fees and costs: Should any action be necessary to enforce this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees.

9.9 Effective Date: This Agreement to be effective as of the date all signatures are obtained.

9.10 This Agreement may be executed in counterparts and, if so executed, each such counterpart shall have the force and effect of an original. A facsimile signature or pdf signature shall have the same force and effect as an original signature.

Handwritten signature and initials in blue ink, located in the bottom right corner of the page.



THE UNDERSIGNED HAVING READ THE FOREGOING, AND HAVING HAD THE OPPORTUNITY TO BE ADVISED BY COUNSEL, FULLY UNDERSTANDS AND AGREES TO ITS TERMS

DATED: 5/2/17

By: 

Kimberly Embry, for and on behalf of  
PLAINTIFF

DATED: 5/8/17

By: 

Shiv Anand, President, for an on behalf of  
Lambro Industries of California, Inc.,  
Lambro Industries, Inc., and Lambro-West,  
Inc.

**NICHOLAS & TOMASEVIC, LLP**

DATED: May 5, 2017

By: 

Craig M. Nicholas  
Attorneys for Plaintiff, Kimberly Embry

**GLICK LAW GROUP, P.C.**

DATED: May 5, 2017

By: 

Noam Glick  
Attorney for Plaintiff Kimberly Embry

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